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FILED
JAN 20 1959
JAMES R. BROWNING, Clerk

Supreme Court of the United States

No. 610

ALBERT J. McDONALD,
Petitioner and Appellant Below,

versus

ROBERT W. O'MEARA, ET AL.,
Respondents and Appellees Below.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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To The Honorable Chief Justice and Associate Justices Of the Supreme Court Of The United States:

First City National Bank of Houston and T. W. Archer, respondents, file this brief in opposition to the application for writ of certiorari herein by Albert J. McDonald.

Respondents' opposition is predicated not only on the correctness of the decision of the District Court and the Court of Appeals as to the absence of any genuine issue

of fact, but, more particularly, on their status of purchasers on the faith of the public records. As such, they are fully protected by the law of Louisiana and their rights as mortgagee and obligee of oil payments may not be affected by the cause of action sought to be asserted herein.

No mention is made of respondents in the petition for Writ of Certiorari herein (pp. 5-11) and, but for the "et als" in the title and the mention of respondents by name in the District Court judgment (Appendix A), one would think the action herein to be solely against Robert W. O'Meara. This is not the fact, as respondents First City National Bank of Houston and T. W. Archer are made defendants in the action herein and the cancellation of the mineral sublease upon which their rights depend is sought to their prejudice.

There is no serious question of violation of the mineral sublease as written, petitioner's contention actually being that O'Meara has violated his sublease *as amended by the Escrow Agreement* (Brief pp. 6-7, complaint Para. 8-9). This Escrow Agreement was not alleged by Petitioner to have been recorded, nor was it in fact recorded. Consequently, when the Bank took its mortgage and Archer acquired his oil payment, the agreement which petitioner now asserts to have been violated was not of record and therefore could not affect the rights of these respondents.

The Louisiana law of registry is set forth in Article 2251 et seq.; the particular article which controls the rights of the parties herein is 2266, which reads, in part:

> "All sales, contracts, and judgments affecting immovable property, which shall not be so recorded shall be utterly null and void, except between the parties thereto. . ."

The requirement of recordation is reiterated specifically as to mineral leases by R.S. 9:2721 (Act 7, 2nd Ex. Sess. 1950) sections 1 and 2 of which read as follows:

> "Sec. 1. No sale, contract, counter letter, lien mortgage, judgment, surface lease, oil gas or mineral lease or other instrument of writing relating to or affecting immovable property shall be binding on or affect third persons or third parties unless and until filed for registry in the office of the parish recorder of the parish where the land or immovable is situated; and neither secret claims or equities nor other matters outside the public records shall be binding on or affect such third parties.
>
> "Sec. 2. Third persons or third parties so protected by and entitled to rely upon the registry laws of Louisiana now in force and effect and as set forth in this Chapter are hereby redefined to be and to include any third person or third party dealing with any such immovable or immovable property or acquiring a real or personal right therein as purchaser, mortgagee, grantee or vendee of servitude, or royalty rights, or as lessee in any surface lease or leases or as lessee in any oil, gas or mineral lease and all other third persons or third parties acquiring any real or personal right, privilege or permit relating to or affecting immovable property."

The courts of Louisiana have consistently and literally applied the law of registry, the leading case being *McDuffie v. Walker*, 51 So. 100, 125 La. 132 (1909), in which the court said:

> "It is evident that whether a person acquires an interest in real estate to the extent of its value or part of its value as a mortgagee or as a vendee the principle involved in the application of the law of registry is the same; . . . The law makes no distinction between mortgages and sales or between creditors and vendees or mortgagees; nor does it discriminate between those who acquire property with knowledge of unrecorded contracts and those who acquire without such knowledge. Its purpose is to establish and enforce as a matter of public policy upon the subject of the most important property right with which it deals the rule that unrecorded contracts affecting immovable property shall be utterly null and void, except between the parties thereto. No language could be plainer or more emphatic, and the courts have no more power to read into the rule established by it an exception, not contained in it, than they would have to read such an exception into the rule that a verbal sale of immovable property shall not affect third persons. (P. 105.)

Similarly, in *Schneidau v. New Orleans Land Company*, 61 So. 225, 132 La. 264 (1912-13), the court stated that the rule

> ". . . provided a method intended to be simple, sure, and inflexible, whereby those who desire to invest their money in real estate may be able to find, upon the public records, the evidence, and all the evidence, needed to establish or defend the title thereto, and

upon the further belief that the law which has been enacted to that end would be improperly interpreted and its purpose defeated, if it were held that an unrecorded vendee could convey to another a title good against a purchaser from the owner of record and good against the world." (P. 230.)

In *Bell v. Canal Bank & Trust Co.*, 190 So. 359, 193 La. 142 (1939), the plaintiff brought a jactitation suit to recover certain real property which had been mortgaged by the record owner to the Prudential Life Insurance Co., and on which defendant (which had acquired the note and mortgage) had foreclosed. The basis of plaintiff's suit was the fraud of the record owner in falsely alleging in previous proceedings to quiet title that he did not know the heirs of plaintiff's ancestor in title or their address. A Judgment to that effect and setting aside the tax sale was rendered in a suit to which defendant was not a party, but there was no evidence in the instant case that defendant had any knowledge or information of the alleged fraud. The court's language in affirming the lower court judgment in favor of the bank is precisely applicable to the facts of this case:

"The jurisprudence is clear under the law of registry that a purchaser of real estate in good faith from the owner of record and without notice cannot be affected by latent equities and secret rights which may have existed in favor of former owners of the property dehors the public records. (Citing authority.)

"The law is well settled that a third person can acquire a good title to immovable property from the owner of record, even though he has been appraised

of the equities or rights of others in the property that did not appear of record, in accordance with the law of registry. (Citing authority.)

"The Prudential Insurance Company of America, having been granted a mortgage on the property on April 16, 1927, to secure the note of $1500, which sum of money it advanced to Dr. Houston L. Staring, who was the sole and only record owner of the property—and there being nothing registered or recorded in connection with the title to show any defects therein or equities or rights of Manuel Bell, Sr., or his heirs, the Insurance Company, as a third party, relying upon the public records and the law of registry is protected against latent rights and secret equities of former owners dehors the record. The Canal Bank & Trust Company, in Liquidation, having purchased, in due course of business, the note secured by the mortgage, without any knowledge or notice of the claims or rights of the heirs of Manuel Bell, Sr., certainly acquired the same rights obtained by the Prudential Insurance Company of America in the mortgage and the note.

. . . . . .

". . . In the instant case, the Prudential Life Insurance Company of America, an innocent party, which took the mortgage from the record owner, relying upon the public records and law of registry, which in no way indicated the latent rights and equities of the claimants, was entitled to a superior and better right to the property over the claimants. The Canal Bank, its transferee, was likewise entitled to assert the same right." (P. 365.)

Most recently, in *Buras Ice Factory v. Department of Highways*, 103 So. (2d) 74, 235 La. 158 (1957-8):

". . . . . appellant invokes and relies on the legal principle that innocent third parties who deal on the faith of the public records are protected thereby.

(1) Appellee does not dispute this legal principle, well recognized in our codal law and jurisprudence. See Revised Civil Code Articles 2254, 2264, 2266; McDuffie v. Walker, 125 La. 152, 51 So. 100; Gonsoulin v. Sparrow, 150 La. 103, 90 So. 528; Derryberry v. Matterson, 193 La. 624, 192 So. 78; Quatre Parish Co. v. Beauregard Parish School Board, 220 La. 592, 57 So. 2d 197 . . . . . "

CONCLUSION

Respondents respectfully submit that there is no occasion for exercise by this Honorable Court of its supervisory jurisdiction for the reasons that petitioner has failed to demonstrate the existence of a genuine issue of fact and for the further reason that these respondents are protected against petitioner's attack by the Louisiana law of registry, wherefore the petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN L. TOLER,
Attorney for First City National Bank of Houston and T. W. Archer.

HARRY McCALL, JR.,
Of Counsel.